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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,548	11/12/2003	Philip H. Spano JR.	DB000972-001	6906

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EXAMINER

BUTLER, MICHAEL E

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/706,548	SPANO	
	Examiner	Art Unit	
	Michael Butler	3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 15 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action, and apply to this and any subsequent Office Actions.

Priority

1. Applicant's claim of priority to application 10010387 filed 12/7/01 is acknowledged.

Drawings

2. The drawings are acceptable.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim(s) 8 is/are rejected under 35 U. S. C. 112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The applicant has conjoined elements using "or" creating vague and indefinite language as to the scope of the claim protection sought- whether (Re: cl 8) "query or restock" is one mode or separate modes. It is particularly ambiguous given the absence of a comma on the last element(s). The claims have been otherwise examined on the merits presuming Boolean "OR."

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claim(s) 2-8 is/are rejected under 35 U.S.C. 102(b) as being anticipated by Weinberger 5408443 which discloses all the claimed elements including:

(Re: cl 2,3,4,5,6,7). A method, comprising: entering user information into a processor controlling a dispensing cabinet (c4 L 34-46)
entering patient information into the processor (c4 L 34-46)
choosing a query mode and identifying an item for which information is sought and displaying substantive information for the identified item (c 10 L 10-40)
opening an unlocked door (c 8 L 51-68)
selecting a compartment identifying the number of items taken from the selected compartment and displaying the number of items taken on a display (c8 L 51-c9 L6)
closing the opened door and locking the unlocked doors (c 9 L 36-59)
(Re: cl 4) unlocking select doors, locking doors subsequent removal (c 9 L 36-59).

7. Claim(s) 4-6 is/are rejected under 35 U.S.C. 102(b) as being anticipated by Blechl et al. 5377864 which discloses all the claimed elements including:

(Re: cl 2,3,4,5,6,7). A method, comprising: entering user information into a processor controlling a dispensing cabinet c10 L 1-25
opening an unlocked door
selecting a compartment identifying the number of items taken from the selected compartment and displaying the number of items taken on a display closing the opened door and locking the unlocked doors (Fig. 12)
(Re: cl 4) unlocking select doors, locking doors subsequent removal (Fig. 12).

8. Claim(s) 4-6 is/are rejected under 35 U.S.C. 102(b) as being anticipated by McDonald et al. '803 (5564803) which discloses all the claimed elements including:

(Re: cl 2,3,4,5,6,7). A method, comprising: entering user information into a processor controlling a dispensing cabinet (c2 L 45-65)

opening an unlocked door (c2 L 45-65)
selecting a compartment identifying the number of items taken from the selected
compartment and displaying the number of items taken on a display closing the opened
door and locking the unlocked doors (c2 L 45-65)
(Re: cl 4) unlocking select doors, locking doors subsequent removal (c2 L 45-65)

9. Claim(s) 1 is/are rejected under 35 U.S.C. 102(b) as being anticipated by Murphee

5330062 which discloses all the claimed elements including:

(Re: cl 1) A method of identifying a shelf within a cabinet, shelf carrying at least one
item to be located by a user, method comprising displaying a numeric shelf level display
a number that is the number of different items to be located which are carried by the shelf
(c 2 L 29-52)

10. Claim(s) 1 and 10-11 is/are rejected under 35 U.S.C. 102(b) as being anticipated by

Ishaziwa et al. 4783740 which discloses all the claimed elements including:

(Re: cl 1) A method of identifying a shelf within a cabinet, shelf carrying at least one
item to be located by a user, method comprising displaying a numeric shelf level display
a number that is the number of different items to be located which are carried by the shelf
(c 4 L 10-38)

(Re: cl 10) flashing the display (c 4 L 68; c7 L 60-c8 L 7)

(Re: cl 11) turning a switch to reset the number to zero and stopping the flashing. (c 4 L
28-38).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim(s) 2-9 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Weinberger and McDonald '803 wherein the former discloses the elements previously discussed and further discloses:

(Re: cl 9) identifying an item includes one of picking an item from a pick list (c 7 L 5-41)

The latter discloses any elements not inherently taught by the former including:

inputting identifying information with a keypad, and barcode scanning (c3 L 1-8).

It would have been obvious for as taught by Weinberger to use a bar code for id to minimize entry error, provide greater security, and speed data entry as taught by McDonald '803 and come up with the instant invention.

13. Claim(s) 2-8 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Blechl et al. and Weinberger and Blechl wherein the former discloses the elements previously discussed and further discloses:

(Re: cl 8) (7) choosing a query mode includes choosing from among a dispense, locate, return, query or restock mode (c9 L 20-35)

The latter discloses any elements not inherently taught by the former including:

(Re: cl 4, 7) entering patient information into the processor (c4 L 34-46)
choosing a query mode and identifying an item for which information is sought and displaying substantive information for the identified item (c 10 L 10-40).

It would have been obvious for Blechl to display substantive information about the medication so the caregiver can review interactions and proper use as taught by Weinberger and come up with the instant invention. It would have been obvious for Blechl to enter patient information to assure the proper patient is receiving the medication as taught by Weinberger and come up with the instant invention.

Response to Amendments/Arguments

14. The applicant's arguments were effective in overcoming the anticipatory rejections.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (703) 308-8344.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh, can be reached on (703) 306-4173. The fax number for the Group is (703) 305-7687.

Michael E. Butler

Michael E. Butler

Examiner


DONALD P. WALSH
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